

*** NOT FOR PUBLICATION ***

NO. 26393

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

STATE OF HAWAI'I,
Plaintiff-Appellee,

vs.

JOHN GUY HELEMANO, JR.,
Defendant-Appellant.

APPEAL FROM THE FIRST CIRCUIT COURT
(FC-CR NO. 03-1-2523)

SUMMARY DISPOSITION ORDER

(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

Upon careful review of the record and the briefs submitted by the parties, it appears the State concedes that the family circuit court failed to comply with the Tachibana requirement of obtaining an on-the-record waiver from the Appellant regarding his right to testify. See Tachibana v. State, 79 Hawai'i 226, 236, 900 P.2d 1293, 1303 (1995). We also conclude that the State's confession of error is supported by the record and is well-founded in law. See State v. Wasson, 76 Hawai'i 415, 418, 879 P.2d 520, 523 (1994); Territory v. Kogami, 37 Haw. 174, 175 (1945). Therefore,

IT IS HEREBY ORDERED that the family circuit court's judgment of conviction, filed on January 13, 2004, for violation of an order of protection (two counts), Hawai'i Revised Statutes, § 586-11, is vacated, and the case is remanded to the family

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circuit court for retrial.

DATED: Honolulu, Hawai'i, September 28, 2004.

On the briefs:

Jon K. Ikenaga, deputy
public defender, for
defendant-appellant

Loren J. Thomas, deputy
prosecuting attorney, for
plaintiff-appellee